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SUBJECT: EL MASRI: MUNICH PROSECUTOR ANNOUNCES ARREST
WARRANTS

REF: 06 MADRID 3104

Classified By: DCM John M. Koenig for Reasons 1.4 (b) and (d)

11. (C) SUMMARY. The Office of the Munich Prosecutor announced January 31 the issuance of 13 arrest warrants for the alleged kidnappers of Khaled El-Masri, a Lebanese-German national who claims he was abducted from Macedonia and taken to Afghanistan in 2004. The thirteen individuals named are the same as those in the previous Spanish case (reftel). Federal Justice Ministry (MOJ) officials told us the arrest warrants are valid in Germany only. The MOJ and MFA will need to assent to an international arrest warrant and will be able to weigh all factors including foreign policy implications in making the decision. The Munich prosecutor's office told ConGen Munich that there had been intense media pressure to act and that they will seek an international arrest warrant. The DCM spoke with MFA State Secretary Boomgaarden who said the German Federal Government had not been warned in advance of the arrest warrants. Boomgaarden called the prosecutor's action "premature" in his personal view. The Bavarian Chancellery called ConGen Munich to say it was surprised and displeased by the prosecutor's actions. End Summary.

12. (U) The Munich Prosecutor's office said in a press release the 13 individuals are under suspicion of having kidnapped El Masri and having caused serious bodily injury. The prosecutor stated he obtained the names of the individuals in December 2005 from El Masri's attorney, who had obtained them from a Spanish journalist's review of official Spanish sources. Spanish authorities, the Milan prosecutor, and the Council of Europe's Rapporteur Dick Marty had provided additional information in 2006 which enabled seeking arrest warrants from a Munich court, according to the prosecutor. The names are believed to be assumed names of CIA agents, the prosecutor said. According to press reports, the names (below in para 7) are those of individuals on board an aircraft which flew to Macedonia via Spain (Mallorca) and then to Afghanistan.

13. (C) Contacted by ConGen Munich, the prosecutor's office confirmed they intend to seek international arrest warrants (Interpol Red Notices); extradition requests might also follow. Prosecutor August Stern told ConGenOff the office of the prosecutor felt compelled to act due to media pressure. Stern claimed to be surprised that the names of the 13 are circulating on the Internet, but he confirmed the accuracy of the list. A representative of the Bavarian Chancellery phoned ConGen Munich to explain that Bavarian authorities had no role in the actions of the prosecutor, who is independent. But the Chancellery was surprised and displeased by the prosecutor's actions. Bavarian Justice Minister Beate Merk

told the CG the arrest warrants were a surprise to her as well.

¶4. (C) Judge Ralf Riegel of the Federal MOJ Office of Extradition and Legal Assistance told EmbOff the Munich Prosecutor had not warned the MOJ in advance and had not yet sent the MOJ any information. Before the prosecutor can obtain international arrest warrants, the MFA and MOJ will individually consider the merits and implications of the cases -- including on foreign policy grounds, he said. Riegel added the USG could intervene with the MOJ and MFA but warned that such U.S. actions might be perceived as an admission of involvement.

¶5. (C) Ministry of Justice DG for Criminal Law Thomas Dittmann told the DCM he welcomed and anticipated hearing from the USG and said he learned of the Munich prosecutor's actions from the press. Dittmann explained the next steps the Munich prosecutor can take. The prosecutor can ask the Bavarian Office of Criminal Investigation (LKA) to contact the Federal Office of Criminal Investigation (BKA) to seek international arrest warrants. The BKA will have to decide whether to treat the cases as routine or whether to seek MOJ and MFA approval. Dittman said the MOJ had already called Bavarian officials to inform them that these 13 cases should not be handled as routine. Dittmann added the Munich prosecutor has jurisdiction in this case because El Masri is resident in Bavaria.

¶6. (C) DCM contacted MFA State Secretary Boomgaarden, who also noted he expected the call and reported he had learned about the prosecutor's actions from the press. He said that the prosecutor's actions sounded premature and that he cannot understand how the arrest warrants can be valid if the

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prosecutor is basing his actions on press reports. He agreed that the MFA will weigh foreign policy implications if the Munich prosecutor seeks an international arrest warrant. He stressed the need to stay in close contact with the USG as this situation unfolded.

¶7. (U) German media listed the following names, which appear identical to those in refTel except for possible minor typographical errors:

- Kirk James Bird
- James Ohale
- James Fairing
- Michael Grady
- Jason Franklin
- Hector Lorenzo
- John Decker
- Lyle Edgard Lumdsen
- Walter Richard Greesbore
- Bryam Charles
- Jane Payne
- Patricia Riloy
- Eric Fair

¶8. (U) ConGen Munich contributed to this cable.
TIMKEN JR